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In the Supreme Court of the United States

No. 800

OCTOBER TERM, 1953

DART TRANSIT COMPANY,
Plaintiff-Appellant,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants-Appellees,

and

ILLINOIS-MINNESOTA MOTOR CARRIERS CONFERENCE, INC., Intervener-Appellee.

BRIEF OPPOSING MOTION TO AFFIRM

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This matter comes before the Court on direct appeal from the final judgment of a three-judge district court refusing to set aside certain findings and an order of the Interstate Commerce Commission directed against appellant. The appeal was allowed on April 9, 1953, and appeal papers were thereafter duly served on the other parties. A detailed account of the facts appears in the Statement as to Jurisdiction. On April 27, 1943, the appellees' Motion to Affirm was served on appellant.

The gist of the argument supporting the motion to affirm is that the questions raised by appellant are not substantial and do not merit even the serious consideration of the Court. The motion to affirm and the argument in its support appear plausible enough and, upon their face, appear successfully to minimize the importance of the issues raised by appellant. It is appellant's conviction, however, that the arguments of appellees will not stand careful analysis, and that the issues—whatever may be the final determination made of them—are substantial and merit careful consideration.

First, as to the burden of proof. Appellant asserts that the Commission neither recognized nor assumed the burden of proof as to the charges which it brought, and on which it made findings, against appellant. The government does not discuss this issue generally in its motion, but confines its discussion to one illustration cited in appellant's jurisdictional statement. In that illustration, appellant demonstrated that a finding of the Commission on one point rested on the testimony of its investigator that appellant had made shipments to a consignee named "Carr Consolidated Biscuit Company." The testimony was that the witness knew nothing of the business of the consignee, but inferred solely from the corporate name that it was a "biscuit company." The government now comes and argues (page 8 of its typewritten motion):

> "We submit that it was not unreasonable to *presume* that the business of a biscuit company relates to biscuits. Certainly the *presumption* was strong enough to shift to appellant the burden of rebutting it." (Emphasis added.)

Thus what was previously merely an inference, becomes, in the argument of counsel, a presumption. In accordance with well-recognized principles of law, a presumption

takes the place of proof and puts the burden of going forward on the other party. Consequently, by simply using the right words the government altogether avoids the burden of proof which is properly upon it and shifts the burden to appellant. That is exactly what appellant is seeking to have this Court correct. That is what the courts that have considered other similar cases recently have held cannot be done. See *Rubin Bros. Footwear, Inc. v. National Labor Relations Bd.* (CA 5th) (decided April 13, 1953) 31 LRRM 2614, and cases cited in jurisdictional statement.

In fact, no substantial evidence, or indeed any evidence at all, has been offered against appellant on this point. The government is simply seeking to substitute words for facts. All that has been offered is that appellant hauled freight to a company with a corporate name including the word "biscuit." Assuming, arguendo, that this is enough to justify an inference (although surely not a *presumption*) that the company is engaged in the manufacture, or distribution, or sales, or something, of biscuits, it surely does NOT justify any inference that the corporation is NOT engaged in any other business or activities. The diversification of American industry is too well known to permit any such inference. The reports of the decisions of this Court alone show the fact. Simply taking decisions at random from the last term, the "Standard Oil Company" is engaged, inter alia, in operating river boats and barges, *Standard Oil Co. v. Peck*, 342 U. S. 382, the "Ruberoid Company" manufactures asphalt and asbestos (not rubber) roofing materials, *Federal Trade Comm'n v. Ruberoid Co.* 343 U. S. 470, and "Youngstown Sheet and Tube Company" operates a steel mill (whether it makes sheets or tubes is not disclosed). *Youngstown Sheet and Tube Co. v. Sawyer*,

343 U. S. 579. A glance through any popular publication will give a dozen other similar or more striking examples. "General Mills" makes electric irons; "Hotpoint" makes refrigerators; "General Motors" makes oil burners, refrigerators and numerous other things besides "motors"; duPont (a "gunpowder company") makes nylon and almost everything else anyone can think of; meat packing companies produce pharmaceuticals; distillers manufacture antibiotics; and the list could be extended endlessly.

If the principle contended for here by the government were adopted it would not only do violence to all principles of logic and legal procedure, but would create endless mischief in the administration of the law. Adoption of a name importing some charitable purpose—such as "benevolent" or "protective"—would create a *presumption* of tax exempt status. Use of a name with a local geographical significance would create a *presumption* against federal jurisdiction based on doing business in interstate commerce. Ridiculous as these suggestions are, they appear no more ridiculous than the suggestion of the government that the mere fact that appellant hauled freight to a so-called "biscuit company" creates a presumption, which appellant is bound to rebut, that the freight hauled did not relate to dairy or packing house products but rather related to some vague category of "biscuit" products.

The government, in its motion, cites a "*Directory of U. S. Companies*" which is alleged to describe the business of the Carr Consolidated Biscuit Company as "biscuits, crackers, cookies." It is not clear what significance this is supposed to have. The most that could be argued from it is that it does support the inference that Carr is engaged in doing something to biscuits, etc. It surely

furnishes no grounds for the negative inference discussed above. However, there is an even more important objection to this. The citation of this "Directory" (which is unknown to appellant) is the very first mention of it, or of any similar source, made in this proceeding. If it is meant to suggest that the Commission took judicial notice of this "Directory", then surely it must be conceded that appellant was entitled to be informed of the source which the Commission proposed to or did resort to as the basis for its findings. Certainly it cannot be contended that the Commission can privately resort to some publications which are, so far as appellant is concerned, secret and undisclosed and can make findings on the basis of reports never disclosed to appellant, in such a proceeding as this. On the other hand, if it is meant merely to suggest that the Commission might have, but did not, utilize such a "Directory" then the answer is that this is wholly irrelevant. It is too late for the government—as it is too late for the appellant—to offer fresh evidence for the consideration of the Court at this stage of the proceedings. Appellant does not know what the alleged "Directory" states, or what sources it is compiled from, or what the data included is intended to indicate. But appellant does not believe that it is appropriate to undertake such an inquiry at this stage of the proceedings. The findings of the Commission are supposed to be based upon evidence which is offered at such a time and in such a manner that it can be examined and analyzed by the parties, that witnesses can be cross-examined, and that rebutting or explanatory evidence may be offered. Certainly this is not the situation with reference to the casual citation of an item from some "Directory" in a motion to dismiss. The fact that appellees feel it either necessary or appropriate to

cite material which is obviously dehors the record is a clear indication that the record itself does not support the inference which the Commission sought to draw from it. The appellees' attempt to invent a verbal formula which will shift the burden of proof to the appellant suggests the difficulty that appellees must have in contending that the Commission either recognized or sustained the burden of proof. To seek to minimize this issue is not merely to take advantage of a small and relatively unimportant trucking company; it is to turn one's back on the lesson of ten centuries of legal history.

Second, as to the nature of the notice to appellant. Appellees assert that appellant is in no position to complain of lack of notice because the nature of its controversy with the Commission was well known to it, because it did not seek a continuance, and because its demand for specification of the issues was not made until the day of the hearing. Again it must be conceded that these are plausible sounding arguments which would, if justified, fully meet any complaint about lack of specificity in pleading in the ordinary case. But this is not the usual case, and these arguments are quite beside the point.

Appellant is not here complaining about lack of particularity or specificity in the pleading. The notice of hearing given to it was specific enough to meet all legal tests. The difficulty was that the Commission did not confine the proceedings to the specified issues and did not give appellant any notice of its intention to depart from the specified issues. Thus the notice said that a hearing would be held on issues A, B and C. Appellant, to protect its record, specifically asked the Commission if any other issues were involved in the case. The Com-

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mission, through its Examiner told appellant, in substance "It's none of your business. Be quiet. Sit down and listen." At the time of issuance of the Examiner's report appellant had a suspicion, but still no definite knowledge, that the Commission was broadening the issues. Not until the issuance of the Commission's report did appellant know that the Commission was making findings not only as to issues A, B and C, but also as to issues D, E and F. A petition for rehearing filed thereafter, specifying this variance as one of the grounds, was denied. When and how should appellant have asked for a continuance? Should appellant have assumed that the refusal of the Commission to specify the issues at the hearing indicated an intention to disregard the constitutional and statutory principles upon which appellant seeks to rely? It is respectfully submitted that no such assumption is practical, warranted or required. To try a case on the assumption that the trial tribunal in rendering its decision will disregard applicable legal principles would be not only discourteous in the extreme, but also utterly impractical and probably unprofessional.

It is quite true that appellant had a long standing controversy with the Commission representatives over the interpretation of appellant's authority. However, this had ranged over the whole field of operations of appellant. At different times it had involved different phases of appellant's operations. The position of the Commission representatives had shifted from time to time. Appellant could not and did not assume that every phase of its long standing controversy would be investigated in this hearing—since the notice of hearing specified particular issues, and since the time for hearing was limited to a very short period.

The fact is that at the time of receiving the notice of hearing and for some time thereafter appellant (and its counsel) assumed that the hearing would be concerned with the issues specified in the notice. In some conversations between appellant's counsel and the Commission counsel shortly before the hearing (which are referred to in the record) appellant first had its suspicion aroused that the Commission agents might not confine the hearing to the issues specified in the notice and which appellant was prepared to try. Accordingly at the very opening of the hearing appellant demanded to know—as it had a right to know under the Administrative Procedure Act—whether any issues were to be tried which were not specified in the notice previously given to it. The Examiner brusquely refused to comment, and no indication whatsoever was given to appellant as to whether or not the Commission considered the "investigation" to be authorized to consider appellant's whole range of operations or to be confined to the matters specified in the notice of hearing.

Thus in the circumstances of this case, the reply of the government to appellant's objection is irrelevant. Appellant's previous communications with Commission agents did not indicate a particular point or points of controversy, but, on the contrary, indicated merely that there was a wide divergence in the views of appellant and the Commission's agents. Thus appellant did, as soon as it had any reason to think that there was an occasion for it, demand to know what the issues, if any, were other than those specified in the notice to it. But it is crucial to keep in mind that appellant was *not* demanding a "bill of particulars" or a "more definite statement" in the usual sense. The notice was sufficiently particular and definite *if it correctly stated the issues*. But if it did

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not correctly state the issues, then the notice was no more than a trap for appellant. It invited appellant to litigate issues A, B and C, but thereafter the Commission made findings as to issues D, E and F. Thus it not only trapped appellant into failing to prepare or litigate issues which the Commission later made findings on, but it also deprived appellant of any opportunity to do what the government now contends appellant should have done—move for a continuance or adjournment.

To reduce the argument to specific terms, the Court is invited to compare the specifications in the notice of hearing (set forth on page 3 of the typewritten motion to dismiss) with the findings of the Commission, as sustained and summarized by the district court (set forth on page 4 of the typewritten motion to dismiss). The issues involve the alleged transportation by appellant of commodities which were outside the scope of its authority. Each commodity is a separate issue, involving distinct and discrete facts and requiring separate investigation and individual witnesses. These issues as stated in the notice of hearing and in the findings are:

NOTICE OF HEARING	FINDINGS AND DECISION
beer in cans, bottles and kegs	beer in cans, bottles and kegs (3)
empty glass bottles for use . . .	glass bottles and jars (4)
tin plate and sheet metal	tin plate, solder & wire, can keys (1)
paper containers . . .	paper containers . . . (7)
other paper products	paper products (7)
paper garment hangers	
	shelled Spanish peanuts (2)
	frozen foods (5)
	loose meats and packing house products from Faribault, Minn. (6)
	cleanser (7)
	wooden boxes (7)
	glass trays (7)

It must be kept in mind that appellant does not complain of lack of notice generally, but only of lack of notice as to findings made by the Commission which were completely outside the scope of any issues tendered to

appellant as involved in the hearing prior to the Commission's decision. When this is understood, it may be seen that the argument made in the motion to dismiss is quite irrelevant to appellant's contention here.

Third as to the limitation on cross examination. This is the kind of issue that it is difficult, or impossible, easily to epitomize. Indeed, it is doubtful if the printed record ever fully conveys the atmosphere and circumstances of a contested trial sufficiently to indicate with accuracy and certainty the nature of such error. However, it is certain that nothing less than the full record will serve to show such error. It is completely contrary to the fact to assert that the examiner's purpose, either expressed or subjective, in limiting the examination was to avoid repetitious and argumentative matters. Appellant does not like to verge on the disrespectful, but it would be closer to the fact to suggest that the examiner's purpose was to prevent appellant from weakening the force of the Commission's testimony. In any event, whatever the purpose of the examiner, the fact stands stark and clear in the record that he did not sustain one single objection by appellant and he did not overrule one single objection by the Commission counsel. Appellant in its presentation of testimony sought to follow the ordinary rules of evidence and did not offer opinion, speculation or conjecture. Nevertheless the examiner curtailed appellant's presentation more than two dozen times on his *own motion*, and other times on the objection of counsel. On the other hand, the Commission counsel offered testimony which was almost nothing but hearsay, conjecture and opinion. But the examiner did not once curtail the Commission counsel in his examination or cross-examination. It is simply absurd to suggest that all of these rulings were to avoid repetition or argument. The au-

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thorities cited in appellant's jurisdictional statement clearly show that the limitations put upon appellant's examination by the examiner are prejudicial error.

Finally, as to the substantive issues, appellant has no quarrel with the general principles stated in the motion to affirm. Appellant does contend that the Commission's interpretation of the term "canned goods" is clearly unreasonable, contrary to the uncontroverted evidence in the record, and is not based upon any expert knowledge or specialized insight that the Commission might have acquired because of its experience with transportation regulation.

The motion to affirm gets slightly confused on this issue, as indeed the Commission has been throughout its controversy with appellant. The government now argues that intended use is a proper test for determining the classification of freight for this purpose. But appellant is prepared to show that this test is used by the Commission here only when it results in a finding against appellant. When appellant demonstrates that the intended use of goods is by the packing or dairy industries then the Commission resorts to some other test. Furthermore, this test has nothing to do with the question of whether or not "canned goods" includes canned beer. On this latter point appellant offered a large amount of testimony and evidence. The Commission offered literally no evidence whatsoever. In its decision the Commission conceded that canned beer is "technically" canned goods, but nevertheless held that appellant had violated its authority by transporting canned beer under its canned goods authority. Appellant respectfully submits that it is unreasonable and improper to find one guilty of violating a law for doing what one "technically" has the right to do. At the very least,

this most assuredly raises an issue substantial enough to entitle one to a plenary hearing before the Court.

Respectfully submitted,

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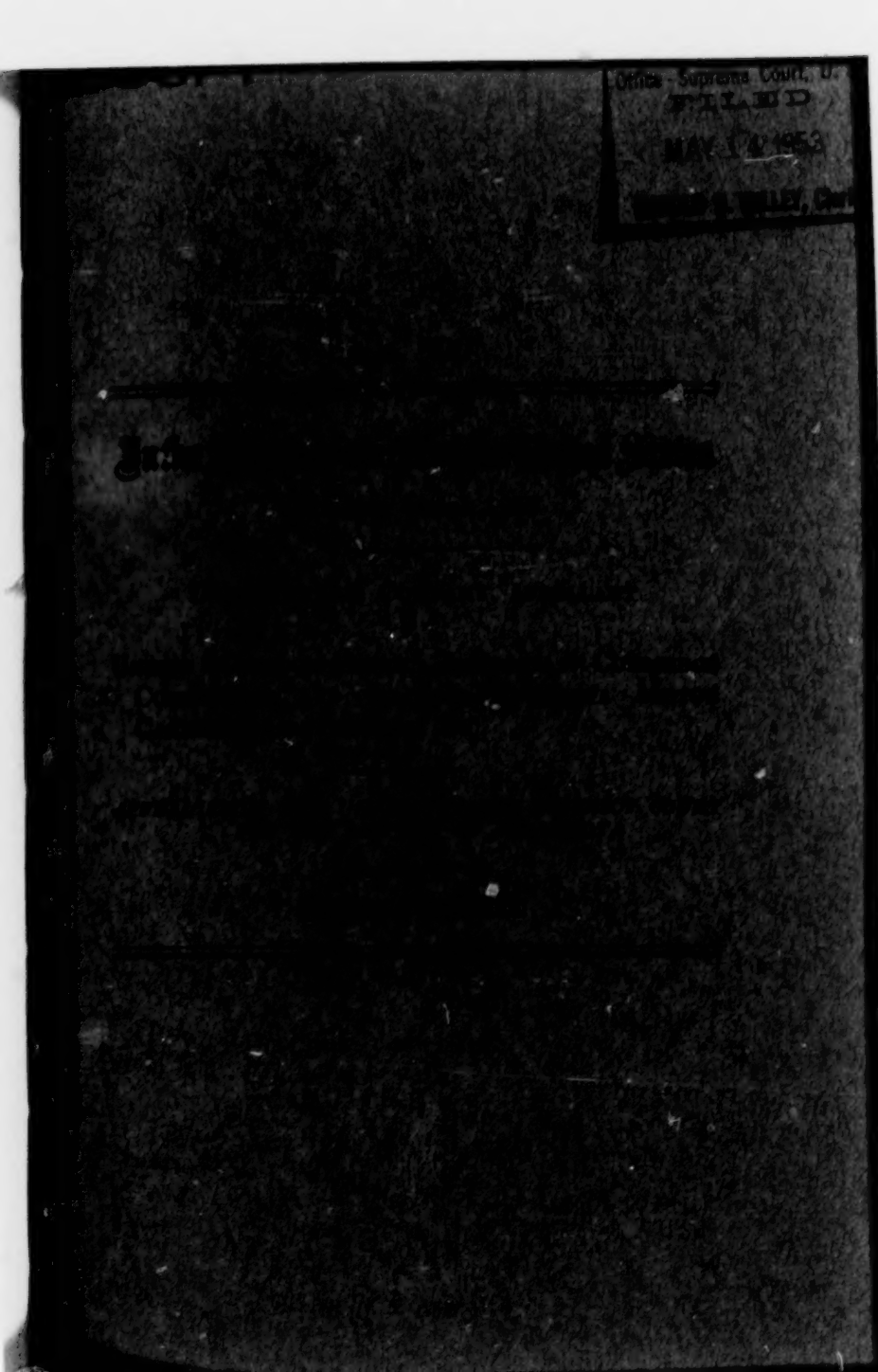
CERTIFICATE OF SERVICE

I certify that I have caused copies of the above and foregoing Brief Opposing Motion to Affirm to be mailed this date to Robert L. Stern, Acting Solicitor General, Justice Department, Washington, D. C., Edward M. Reidy, Chief Counsel, Interstate Commerce Commission, Washington, D. C., counsel for appellees, and David Axelrod, Esq., 39 South LaSalle Street, Chicago, Illinois, counsel for intervener.

Dated: May ——, 1953.

LEE LOEVINGER.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In the United States District Court for the District of Minnesota, Fourth Division

CIVIL NO. 4288

DART TRANSIT COMPANY, PLAINTIFF-APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANT-APPELLEES

AND

ILLINOIS-MINNESOTA MOTOR CARRIERS' CONFERENCE, INC., INTERVENER-APPELLEE

MOTION TO AFFIRM

Pursuant to Rule 12, paragraph 3, of the Revised Rules of the Supreme Court of the United States, appellees United States and Interstate Commerce Commission move that the final judgment of the district court entered on March 20, 1953, be affirmed.

This is a direct appeal from the final judgment of a specially-constituted three-judge district court, convened pursuant to 28 U. S. C. 2284. The court dismissed appellant's complaint which sought to set aside a cease and desist order entered by the Commission on May 26, 1952. Appeal was allowed on April 9, 1953, and appeal papers were served on April 13, 1953.

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The essential facts are summarized in the report of the Commission (54 M. C. C. 429) and in the detailed opinion of the district court, a copy of which is appended to appellant's statement as to jurisdiction. We shall state them here in brief.

Appellant has authority as a contract carrier to transport certain commodities over irregular routes between specified points. Its permit, issued in 1942, contains the following commodity descriptions: (1) "Packing house and dairy products, equipment, materials, and supplies"; (2) "Dairy products, equipment, supplies, and materials"; (3) "Canned goods and canning factory supplies."

The first instance in which the Commission had occasion to construe appellant's authority was in 1949 when appellant petitioned for a clarification or modification of its permit. See *Dart Transit Company—Modification of Permit*, 49 M. C. C. 607. In addition to denying appellant's request, made in that proceeding, for authority to transport general commodities, the Commission set forth the criteria which should be employed in determining whether a particular commodity shipment should be deemed a packinghouse or dairy supply. It stated in this connection (49 M. C. C. at 611):

> * * * A particular item as, for example, sawdust or cotton duck when moving to a packinghouse or dairy is readily classified as a packinghouse or dairy supply, but the same commodity may also be used by others in wholly different businesses. Obviously, sawdust is not a packinghouse supply when con-

> signed, for example, to a briquet manufacturer or fuel dealer, nor would cotton duck be a packinghouse supply when moving to a tent or awning manufacturer. In order for sawdust or cotton duck to be a packinghouse or dairy material or supply, they must be carmarked or intended at the time for use in a packinghouse or dairy. Thus, almost without exception packinghouse supplies, et cetera, would move only to or from packinghouses or to or from dealers in packinghouse supplies, et cetera, and any movement of a commodity which might be a packinghouse commodity, to or from any other type of shipper would normally appear to be outside petitioner's authority in the absence of special or unusual circumstances.

As the court's opinion notes, appellant has persistently resisted this construction. Thus, in 1950, an official of the Bureau of Motor Carriers advised appellant by letter that it was exceeding its authority. The letter set forth several types of shipments which, viewed in the light of the character of the shipper, could not be deemed within the scope of the permit, a permit which had been designed to limit the carrier to serving particular types of industrial users. The shipments which the Bureau stated to be unauthorized were:

(1) Shipments of tin plate from Gary, Indiana, to the American Can Company (a manufacturer of cans) in St. Paul, Minnesota.

(2) Shipments of boxes, cartons, etc., for Waldorf Paper Products Company.

(3) Shipments of canned and bottled beer for the Hamm Brewing Company.

(4) Shipments of glass bottles for the Toni Company.

(5) Shipments of cleanser for the Royal Lemon Company in Minneapolis.

(6) Shipments of frozen eggs in cans.

(7) Shipments of cases or cartons from Flour City Box Company to Pepsi Cola Bottling Company.

Appellant's counsel advised the Bureau that it would continue to assert the right to make such shipments "when and until it is prevented from doing so by legal action."

Thereupon, the Commission, by order of August 4, 1950, instituted an investigation into appellant's operations. The order charged appellant with transporting

> various commodities not within the scope of the commodity description * * *; including beer, in cans, in bottles, and in kegs; empty glass bottles for use in distributing soft drinks, beer, hair waving solutions; and shampoos; tin plate and sheet metal to a can manufacturer for use in manufacturing cans; paper containers and other paper products for use by manufacturers of or dealers in electric batteries, paints, beer, dry cleaning supplies, flour, soap, and petroleum products; and paper garment hangers.

The stated purpose of the investigation was to determine whether appellant was exceeding its permit and, if so, to take corrective action.

A hearing was held in November 1950 before a duly qualified examiner, who found that appellant had been exceeding its authority. In accordance with usual practice, the parties were afforded full opportunity to file briefs and exceptions to the examiner's proposed report. On May 26, 1952, Division 5 of the Commission issued its report and order. Its ultimate findings and conclusions were summarized in the opinion of the district court as follows:

> (1) that shipments of tin plate, solder, and wire can keys delivered to a can manufacturer were not within the coverage of Dart's permit, even though the manufacturer used the materials for the making of cans for packing houses or canneries; (2) that shipments of shelled Spanish peanuts (which Dart's records showed it had transported, but which its president denied that it had transported) were unauthorized; (3) that the transportation of beer in cans, bottles, and kegs was not within the scope of Dart's authority, since the term "canned goods" as used by the Commission did not include canned beer or other materials which merely for convenient packaging were put in cans, and since carriers serving breweries were customarily authorized to transport "malt beverages," while those serving canneries were authorized to transport "canned goods"; (4) that Dart had exceeded its authority in transporting certain glass bottles and jars for uses foreign to packing houses, dairies or canneries; (5) that frozen foods were not "canned goods" within the meaning of Dart's permit; (6) that loose meats

> and packing-house products shipped from a meat packer in Faribault, Minnesota, to itself in Chicago were not within the scope of Dart's permit; (7) that Dart exceeded its authority in transporting paper containers, paper products, cleanser, wooden boxes, and glass trays to or for persons not engaged in the packing house, dairy products, or canning business, it appearing that such commodities were not products of or intended for use in a packing house, dairy or canner, and that, in order for Dart to stay within the scope of its authority, "such commodities must at the time of shipment definitely be intended for use by a packing house, dairy-products concern, or cannery."

The order issued by the Commission directs appellant to cease and desist from all operations of the character found in the report to be unlawful. A petition for rehearing was denied on September 18, 1952.

In its complaint filed in the district court, appellant urged that the Commission had improperly construed its permit and that the administrative proceeding had been characterized by various procedural errors. The district court concluded, upon an examination of the record, that the Commission's factual findings concerning the operations attributed to appellant were fully supported by substantial evidence. It held that the Commission's construction of the language of the permit was entitled to great weight and that its construction was in no respect arbitrary. As to the Commission's conclusion that certain of

the described activities were in excess of authority, the court held that the Commission was "clearly right"; as to the other activities, the court concluded that the Commission's construction of the permit was not unreasonable. The court also considered and discussed each of the procedural errors charged and found them to be without substance.

1. The substantive issues in the case involve the meaning of particular commodity descriptions used in a particular carrier's permit. There is no question raised as to the well-established authority of the Commission to specify the type of service to be rendered by an authorized motor carrier and to adopt an appropriate method of classification. See Sections 204 (b), 208; *Crescent Express Lines* v. *United States*, 320 U. S. 401, 408. And there can be no doubt, we believe, that the Commission's construction of language used in an instrument of authorization issued by the Commission is controlling, unless it be clearly unreasonable. *United Truck Lines* v. *Interstate Commerce Commission*, 189 F. (2d) 816, 817 (C. A. 9), certiorari denied, 342 U. S. 830; *Adirondack Transit Lines* v. *United States*, 59 F. Supp. 503, 504 (S. D. N. Y.), affirmed, 324 U. S. 824; *Malone Freight Lines, Inc.* v. *United States*, 107 F. Supp. 946 (N. D. Ala.), affirmed 344 U. S. 925.

The primary source of dispute between the Commission and appellant has been the Commission's view that appellant's authority to carry particular shipments of commodities must be determined on the basis of whether such shipments are intended for use

by a packing house, dairy-products concern, or cannery. It is a common practice of the Commission as reflected in numerous certificates and permits which have heretofore been examined by this Court, to define carrier authority in terms of the function or use to which the transported materials are to be put. Certainly, there is nothing inherently unreasonable in such a system of classification. "An accurate definition frequently can be made only in terms of the type or class of shippers to be served." *Noble* v. *United States*, 319 U. S. 88, 91–2.[1]

As noted above, the district court has found that the Commission's construction of appellant's certificate, as applied to the various described activities found unauthorized, is free from arbitrariness. Without further elaboration of the particulars, which are fully explained in the court's opinion, we respectfully submit that this conclusion is a sound one, and that this case presents no substantial issue of general importance which would warrant further appellate review.

2. Various procedural errors are urged by appellant. Thus, it is argued that there was inadequate notice because the order which instituted the Commission's proceeding did not specify each of the

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[1] A different type of question was presented in connection with the Commission's conclusion, challenged by appellant, that the carriage of beer in cans was not authorized. This was based upon a determination that the term "canned goods" is a term of art relating to products of the canning industry and not to products of the brewing industry. See 54 M. C. C. at 434–5.

commodities whose carriage was ultimately determined, as a result of the investigation, to be unauthorized.[2] The district court found that, in the circumstances, there was no showing of prejudice because of the failure to provide a "complete and precise bill of particulars." Nor is there any such showing in the appeal papers. It is to be noted, in this connection, that the differences between the Commission and the appellant were of long standing and their nature was well known to each. Moreover, at no point during the hearing did appellant seek a continuance or adjournment so that it might adduce further evidence. The court properly concluded that appellant "was already aware of the issues to be tried." [3]

It is also claimed that appellant was unduly restricted in its efforts to cross-examine the Bureau of Motor Carrier agent who appeared as a witness for the Commission. Such restrictions as there were, it is apparent from a reading of the transcript, were imposed in connection with questioning of the agent designed to elicit his views on the meaning of language in the permit. The purpose of the examiner in limit-

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[2] As noted above, the order charged the transportation of "various commodities not within the scope of the commodity description * * * including etc."

[3] In its assignment of error no. 4, appellant asserts that it made a "timely demand" for further particularization. As indicated in its statement as to jurisdiction, however, the demand was not made until the day of the hearing, more than three months after the issuance of the order instituting the investigation.